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CONSUMER ADVOCATE DIVISION  
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February 24, 1998

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VIA AIRBORNE EXPRESS

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

Re: In the Matter of LCI Petition for Declaratory Ruling  
CC Docket No. 98-5

Dear Mr. Caton:

Enclosed for filing in the above-stated matter, please find the original and twelve (12) copies of the Comments of the West Virginia Consumer Advocate on LCI Petition for Declaratory Ruling Concerning Bell Operating Company Entry into In-Region Long Distance Markets.

A copy has been sent to Janice M. Myles at the Common Carrier Bureau of the FCC and also to the Commission's contractor for public service records duplication, The International Transcription Service, Inc. in accordance with the instructions on your Public Notice released January 26, 1998.

Respectfully submitted,

Gene Lafitte  
Counsel for Consumer Advocate

GL/cs  
Enclosures

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271 compliance. This proposal moves boldly into waters that other stakeholders, on all sides of the telecommunications market, seem more than willing to tiptoe around. The projected timetable for effective competition to arrive, with all of the concomitant benefits to residential consumers, has been revealed to be completely unrealistic. Competing industry stakeholders are forcefully exercising their legal rights to shape the Act's implementation, or to scuttle it outright, after lobbying for years to see it enacted. Time is passing, and it remains far from clear whether the status quo is a transitional precursor, or an indefinite scenario of failure. It is also becoming clear that rural states like West Virginia may have to wait even longer for competitors interested in providing residential local service of any type.

The LCI Petition is an outgrowth of one practical concept: unless and until the RBOC's deal with their own network operations at arm's length, and on equal footing with other competing local exchange carriers, competition will likely remain a theoretical abstract. LCI's experience in both long distance and local service lends credibility to its assertion that when one class of competitors - in this case the RBOC's - control a ubiquitous network upon which rivals depend for economic viability, the RBOC's have no sustainable incentive to subject themselves to the forces of competition.

In explaining how these problems threaten long term competitive goals, LCI points to three specific, and potentially insurmountable, "bottleneck" obstacles caused by the current institutional framework: 1) inadequate operations support systems ("OSS"), 2) lack of availability of unbundled network elements; and, 3) pricing. Describing the problem as "non-transitional," and an "inevitable result of an inherent conflict of interest between an RBOC's dual role of network supplier and service provider," the logic of LCI's assessment is evident and difficult to refute. As LCI has articulated the problem, "any incentive the RBOC might have to sell the use of its

local facilities network efficiently to CLEC's is stunted by the fact that in doing so, the RBOC's retail operations will lose customers and revenue." (LCI Petition at pp. 2-3).

LCI's petition may be most interesting in recognizing certain limitations under which all parties may be operating. The LCI Petition takes bold aim at two market dynamics which currently plague implementation of the Act: inertia and aversion to risk. For many industry players, competition is fine as long as it does not cost market share or margins. Many potential competitors appear reluctant to undertake the risks required to make local service a reality, and the RBOC's are loathe to relinquish their powerful local monopoly, even in exchange for interLATA relief. LCI's point, from a competitor's perspective, is that no amount of external pressure upon an RBOC as a "carrier's carrier" will offset the inherent conflict of interest at the core of its existence. No amount of regulatory oversight can guarantee seamless OSS interfaces for CLECs, or ensure compliance with imputation safeguards.

The LCI Petition is an important step in untangling the current competitive deadlock precisely because it accounts for the inherent limitations of government-enforced deregulation. LCI recognizes that economic self-interest is endlessly creative in finding ways to circumvent competitive market goals. Its proposal accounts for this important structural flaw by shifting the pressure for change from external regulatory oversight to the market itself.

### UNIVERSAL SERVICE

The LCI Petition has merit for an additional reason: the so-called "fast track" approach will accelerate and clarify the universal service process at both the federal and state level. There is simply no question that before real competition can take hold under the Act, workable, predictable and efficient universal service mechanisms must be in place. This is the only means

by which citizens of rural, high cost states like West Virginia will benefit under the Act. By advocating "fast track" Section 271 compliance, LCI has correspondingly moved the issue of universal service funding and implementation to a faster track, and that serves the interests of West Virginia residents waiting to see some real evidence of how they benefit from telephone deregulation.

Under the LCI proposal the network subsidiary would sell network services and elements to all retail service providers at cost-based, non-discriminatory prices. Retail service providers serving high-cost areas would be the recipients of universal service funding. The amount of the universal service contribution would simply be the difference between the price paid by the retail service provider and the appropriate state or federal benchmark. Under this proposal the network subsidiary is indifferent to the size of the universal service fund since it is presumably recovering all of its costs by selling network services. Retail service providers are not adverse to serving high-cost areas since they are recompensed for costs above the benchmark. Finally, customers in high cost areas are benefited since competitive choices are offered and reasonable rates are maintained.

#### CONSISTENCY WITH THE ACT

Although the LCI proposal is built around voluntary restructuring, and a "rebuttable presumption" that local markets are irreversibly open for purposes of Section 271, actual competition and compliance with Section 271's checklist remains the only acceptable benchmark for RBOC entry into the interLATA market. Any proposed threshold for Section 271 compliance short of real competition threatens the prospects for the Act's long term success. The focus of the Department of Justice, the FCC, and state commissions must remain on the end game:

competition that works in the public interest. A rebuttable presumption cannot serve to modify, or ease, the burden placed on RBOC's by Section 271. Instead, the alternative proposed by LCI should simply facilitate, and possibly accelerate, the compliance process. Appropriate fact findings will still have to be made under the checklist concerning actual market conditions, and nothing in the LCI Petition suggests anything to the contrary.

For the above reasons, the West Virginia Consumer Advocate supports and urges the Commission to adopt, the so-called "fast track" proposal set forth in the LCI Petition. The Petition advances the policies underlying the Act, and we believe it to be a step in the right direction in achieving competitive universal telecommunications service for all consumers.

Respectfully submitted,



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